No. 79-347

In the Supreme Court of the United States

OCTOBER TERM, 1979

CITY OF LOS ANGELES, CALIFORNIA, ET AL., PETITIONERS

v.

NEIL E. GOLDSCHMIDT, SECRETARY OF TRANSPORTATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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Petitioners contend that the court of appeals incorrectly interpreted its prior mandate to the district court in this case and thus erred in ordering that petitioners be awarded less than the full amount they claimed under the Airport and Airway Development Act of 1970, 49 U.S.C. 1701 *et seq.*

1. Petitioners are three public authorities operating airports that serve carriers certificated by the Civil Aeronautics Board. They brought these suits to establish their entitlement to funds under Sections 1714 and 1715 of the Airport and Airway Development Act of 1970 ("the Act"), 49 U.S.C. 1714, 1715.[1]

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[1]The Airport and Airway Development Act Amendments of 1976, Pub. L. No. 94-353, 90 Stat. 871, substantially altered the 1970 Act. In particular, while the 1976 amendments retained a grant system to aid the development of airports, they adopted both different authorization ceilings and a different apportionment formula for fiscal

Under the Act, the Secretary of Transportation was authorized, for the purpose of aiding the development of airports serving carriers certificated by the CAB, to make grants in aggregate amounts of not less than $250 million for each of the fiscal years 1971 through 1973 and $275 million for each of the fiscal years 1974 and 1975. 49 U.S.C. 1714(a). Pursuant to 49 U.S.C. 1715(a)(1), these funds for airport development were apportioned in the following manner: (1) one-third to the states, in proportion to their population and area, (2) one-third to airports, including petitioners, in proportion to the number of passengers served (the "enplanement formula"), and (3) one-third at the discretion of the Secretary. Funds allotted to airports under the enplanement formula were available for approved airport development projects for the fiscal year in which they were apportioned and for two successive years, and any funds not obligated by grant at the end of that period were automatically transferred to the Secretary's discretionary account under the Act. 49 U.S.C. 1715(a)(5). At the end of the fiscal year 1974, the Secretary had obligated $193.7 million less than the total funds apportioned (Pet. App. 38a).

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years 1976-1980 than had been in effect for fiscal years 1971-1975. See 49 U.S.C. 1714(a)(3), 1715(a)(3). Furthermore, at the time that the Conference Report on the 1976 amendments was pending, Representative Anderson, the chairman of the House subcommittee with jurisdiction over the amendments, stated in the floor debate regarding the 1977 appropriation that any deficiency between the authorization and the appropriation would result in a pro rata reduction in all development grants. See 122 Cong. Rec. 20994 (1976). Thus, although an appropriation shortfall can still occur under the currently effective statute and necessitate a reduction in airport development grants, the issues raised by petitioners concerning the Act in force in fiscal years 1971-1975 are of little continuing general interest.

Notwithstanding the obligation levels authorized in the Act itself, Congress in each of the relevant appropriations acts limited the amount available for airport development grants. For fiscal year 1975, commitments for airport development were limited to $310 million. This was well below the amount authorized under Section 1714(a) of $503.7 million, consisting of the $310 million annual authorization for that year plus the $193.7 million carried over from previous years (Pet. App. 38a).

2. Petitioners claimed in the courts below that, despite the limitations imposed by the appropriations acts, they were still entitled to receive the full share of enplanement funds that had been authorized by Sections 1714(a) and 1715(a)(1)(B).[2] The court of appeals, in its first opinion, rejected this contention, holding that the appropriations measures constituted amendments of the original legislation that "prevented the [Secretary] from making the 'minimum' grants provided by the 1970 Act" (Pet. App. 44a). The court also held that, to comply with the new spending ceilings, the Secretary was required to make a pro rata reduction in the amount of funds available to all categories of grantees for fiscal year 1975 (*id.* at 47a).[3] The court remanded the case to the district court "to determine, in accordance with this opinion, the method of pro rata reduction the [Secretary] should have used in granting enplanement funds * * * [and] then [to] order

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[2]The unobligated balance of money that would have been apportioned to petitioners under the enplanement formula, absent subsequent congressional action, was as follows: (1) $9,585,000 for Los Angeles, (2) $5,024,782 for Dade County, and (3) $292,187 for Jacksonville (Pet. App. 9a, 17a, 25a).

[3]The court rejected the Secretary's contention that, as a result of the amendments, the agency had discretion to disburse funds without regard to the allocation prescribed in Section 1715(a)(1)(B) (Pet. App. 44a-48a).

the [Secretary] to grant to the [petitioners] what [they] would have gotten if the [Secretary] had been using during FY 1975 the method that, in our view, was mandated by Congress" (*id.* at 49a).

On remand the district court concluded that, notwithstanding the new spending ceilings, petitioners were still entitled to receive the full balance of funds authorized by the original legislation (Pet. App. 12a, 20a, 27a). On the government's appeal, the court of appeals ruled that the district court's decision was "inconsistent with the terms of our remand, which clearly contemplated determination of a 'pro rata reduction' " (*id.* at 4a). The court adopted the formula proposed by the Secretary, which called for an across-the-board reduction of 25.5% in funding (*ibid.*; J. A. 62). Since petitioners had already received the $11 million (out of their total claims of $15 million) to which they were entitled under this formula, the court of appeals remanded the case with instructions to enter judgment in favor of the government (Pet. App. 4a).

3. The decision of the court of appeals does not warrant further review. It is well settled that a district court is without authority to depart from the terms of a remand order. See, *e.g.*, *Greater Boston Television Corp.* v. *FCC*, 463 F. 2d 268, 279 (D.C. Cir. 1971). Cf. *Stanton* v. *Stanton*, 429 U.S. 501 (1977). The court of appeals' interpretation of its remand order, and its determination that the district court deviated from its mandate, are entitled to substantial deference.

In any event, the court of appeals correctly rejected (Pet. App. 4a) petitioners' claim to an undiminished entitlement to funds under the Act. In its first opinion, the court of appeals held that the congressional limitation on appropriations for the Airport and Airway Development

Act made it impossible for the Secretary to adhere to the full statutory authorization and that therefore each grant under the Act had to be reduced by a proportionate amount. Petitioners do not challenge the validity of this ruling. Despite the court of appeals' decision, however, the district court concluded on remand that it was unnecessary to reduce petitioners' grants because there were sufficient reserves in the enplanement account at the end of fiscal year 1975 to meet the original authorization of the Act (*id.* at 10a-11a, 18a-19a, 26a). This conclusion was erroneous.

Under the remand order, the district court was required to reduce each grant pro rata in accordance with the method that the Secretary should have followed in fiscal year 1975. Contrary to the reasoning of the district court, the existence of reserves at the end of the year has no bearing on that issue. The grant level for each airport is determined at the beginning of the fiscal year by allotting the total funds available for that year among all eligible airports on the basis of the percentage of passengers enplaned at each airport. 49 U.S.C. 1715(a)(1). This allotment is entirely unaffected by the year-end balance of funds. Moreover, the proportionate reduction in each grant called for by the court of appeals' remand order does not change simply because funds designated for other airports remain unspent at the end of a fiscal year. Such undisbursed funds do not accrue to petitioners' accounts, but rather remain available to the original airports for a two-year period and then revert to the Secretary's discretionary account. 49 U.S.C. 1715(a)(5). Since the district court thus failed to reduce petitioners' grant to reflect the new funding levels established by Congress, the court of appeals correctly concluded that the district court had violated the terms of the remand order.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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